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April 5, 2016

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Bruce R. Chapper
1000 S. Kenwood Ave.
Baltimore, MD 21224

Alan Kittleman
County Executive
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

RE: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

To Whom It May Concern:

This sixty-day notice of intent to file a citizen suit against Donaldson Properties No. 3, LLC, and its affiliated entity Donaldson Funeral Home, P.A., (collectively "Donaldson") and Alan Kittleman ("Kittleman") (collectively, "you"), in his official capacity as County Executive of Howard County, Maryland (the "County") for violations of the Federal Water Pollution Control Act,¹ as amended (the "Clean Water Act," "CWA," or "Act"), for the reasons described below, is served on behalf of Alan J. Schneider ("Schneider"). Any response to this letter should be addressed to the undersigned counsel for Mr. Schneider at the above letterhead address.

Donaldson has applied for and has received permits from the County in preparation for construction of a large new complex mortuary of 17,000 sq. ft. (the "Mortuary") on a parcel having less than 3 buildable acres in southwest Howard County on State Route 108, more commonly called Clarksville Pike. The address for the Mortuary is 12540 Clarksville Pike, Clarksville, MD 21029 (the "Property"). It is a rural, residential property on well and septic.

Schneider resides at 12598 Clarksville Pike, Clarksville, MD 21029-1534, close to the Property. His property is bordered by an unnamed tributary of Carrolls Branch (the "Tributary"), which intersects with the Property further upstream. The Maryland

¹ 33 U.S.C. § 1251 *et seq.*

Department of the Environment (“MDE”) has designated the Tributary as a Tier II state water, meaning that it exceeds the minimum criteria for its designated use.² Specifically, the Tributary is a Tier II, Class IV-P stream, meaning its designated use is for Recreational Trout Waters and Public Water Supplies.³ Mr. Schneider derives significant recreational and aesthetic value from the proximity of such a high-quality waterway to his home. Despite the well-researched, meaningful input of Schneider and others into the relevant proceedings, the County has nevertheless ignored, dismissed, or failed to take action to prevent the environmental harms to the Tributary and associated wetlands, which construction and operation of the Mortuary will cause.

The Tributary originates just north of the Property, and flows south-south-west until it joins with Carroll’s Branch west of Clarksville Pike. The Tributary intersects the Property on its northwestern corner, and flows roughly parallel to the rear property line afterwards. Carroll’s Branch is itself a tributary of the Middle Patuxent River. According to current state data from MDE,⁴ the Tributary is one of only six Tier II waters in the County. As noted, the Tributary is designated for use as a Recreational Trout Water and Public Water Supply. The designated uses and associated water quality standards are promulgated pursuant to Section 303(c) of the CWA; any water quality standards developed under Section 303(c) must be incorporated into NPDES permit limitations developed under Section 301(b)(1)(c).⁵ However, according to MDE’s Tier II High Quality Waters Map,⁶ the Tributary does not have any remaining assimilative capacity for additional pollutants.

The County, by and through its Board of Appeals (“Board”), ruled in favor of granting Donaldson a conditional use as depicted in the submitted Plan on the basis of

² See Code of Maryland Regulations (“COMAR”) 26.08.02.04-1.C (Compilation and Maintenance of the List of High Quality Waters); COMAR 26.08.02.04-1.O (List of Tier II Waters).

³ COMAR 26.08.02.03-3.G.

⁴ Available at:

<http://www.mde.maryland.gov/programs/Water/TMDL/Water%20Quality%20Standards/Pages/HighQualityWatersMap.aspx>

See also http://www.mde.state.md.us/assets/document/hb1141/howard/Howard_County.pdf

⁵ See 40 C.F.R. 131.21(d) (“Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act.”); see also *Northwest Environmental Advocates v. City of Portland*, 56 F.3d 979, 988 (9th Cir. 1995) (“[T]he Sec. 402 permit process require applicants to comply with CWA Sec. 301. As noted above, Sec. 301 incorporates by reference the water quality requirements of Sec. 303.”).

⁶ See *supra* note 4.

incomplete, and materially misleading, evidence. The Board Order specifically held that: “[t]he conditional use shall apply *only* to the proposed funeral home and mortuary as described in the petition and *as depicted* on the Amended Conditional Use Plan dated August 15, 2012 and *not* to any other activities, uses or structures on the Property.”⁷ It follows that any material deviation from the Amended Conditional Use Plan dated August 15, 2012 was not approved.

Donaldson, in its petition to the Board, presented sworn “expert” testimony that falsely claimed that there were/are “no wetlands” on the Property. Furthermore, the Amended Conditional Use Plan presented to the Board for approval did not identify any wetlands or springs on the Property. The result of these material omissions by Donaldson⁸ is that the Board’s findings and conclusions in its Order are not an approval of the current Plan, since the County’s zoning regulations, including Chapter 130.0.C.14, require the Board to consider wetlands,⁹ which was not done.

Despite Donaldson’s refusal to permit anyone access to the site during the hearing, and the Board’s inability to require Donaldson to consent to access to view the site, after the hearing, multiple wetlands and springs were discovered on the Property, and confirmed by MDE. Consequently, in October 2015, Donaldson revised its Site Plan to include previously undisclosed wetlands and springs, for resubmission to the County’s Department of Planning and Zoning (“DPZ”) for “technical approval.” The County, by and through its Department of Planning and Zoning (“DPZ”), issued an approval of the revised Site Plan, which was not the plan submitted to the Board for its consideration

⁷ See Ex. 1, Board Order, at 2 (emphasis added); Howard County Board of Appeals, BA Case No. 10-001C, at 31, *available in full at* <http://cc.howardcountymd.gov/LinkClick.aspx?fileticket=MBXGfojqfxA%3d&portalid=0> (Last accessed April 4, 2016).

⁸ Giving Donaldson the benefit of the doubt for the sake of argument, the “expert” testimony submitted on its behalf to the Board was, at best, incompetent.

⁹ In full, this provision reads:

“Where in these regulations certain powers are conferred upon the Hearing Authority, or the Hearing Authority is called upon to decide certain issues, such Hearing Authority shall examine the specific property involved and the immediate neighborhood. The application shall not be approved where the Hearing Authority finds that the proposed structure, addition, extension of structure or use, use or change of use, would menace the public health, safety, security, or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Hearing Authority shall give consideration, among other things, to the following:

“14. The effect of the proposed use or development on the natural, environmental or landscape resources of the site and adjacent sites, including such resources or features as historic resources, floodplains, *wetlands*, steep slopes and vegetation.” (emphasis added)

before deciding whether to approve a Conditional Use at that location after a public hearing. However, the DPZ is not authorized to approve Conditional Uses.

As noted, the revised Site Plan is substantially different from the plan “as depicted” to the Board for its approval. The newly revised Site Plan therefore did not comply with the Board’s Order. Accordingly, the revised Site Plan has never received Conditional Use approval by the Board, since consideration of environmental effects is required by the County’s zoning regulations. More specifically, the Board of Appeals is required to consider “wetlands” and springs,¹⁰ but never did so because of Donaldson’s evidence and testimony was that “no wetlands” existed on the Property. Thus, because Donaldson submitted an Amended Site Plan, which was materially different than the Conditional Site Plan submitted to the Board of Appeals for its approval of a Conditional Use for a mortuary in a rural residential area, the Board’s approval of a Conditional Use expressly does not now exist.¹¹

As noted, Donaldson’s omission of many of the Property’s unique, protected environmental features on the Amended Conditional Use Plan dated August 15, 2012, misled the Board into concluding that there was insufficient evidence that the adverse effects would be greater at the proposed site (*e.g.*, on the Property) than they would be elsewhere, under the Board’s interpretation of the *Schultz v. Pritts*¹² test. Donaldson’s after-the-fact inclusion of a revised plan, which revealed the location of previously-undisclosed springs, wetlands, and perennial flows of water in the middle of the Property,¹³ precluded the Board from properly exercising its duty to analyze all the numerous factors which it must consider. Specifically, the Board was precluded from evaluating the wetlands that it is *required* to evaluate under Section 130.0 C.14 of the Howard County Zoning Regulations. The Board’s Order approving a Conditional Use on the Property is therefore deficient as a matter of law for failure to undertake the antidegradation review required by the Zoning Regulations, COMAR, the Act,¹⁴ and any construction undertaken pursuant to its authority is unlawful.

Even assuming, *arguendo*, that the Conditional Use was properly granted for the Mortuary as currently being constructed, both Donaldson and the County have

¹⁰ Zoning Regulations Ch. 130.0.C.14.

¹¹ See Ex. 1, at 2.

¹² 291 Md. 1, 432 A.2d 1319 (1981) (laying out the basic framework for evaluating the impact of land use/zoning decisions).

¹³ All of which require buffer zones of at least twenty-five feet (25’), if not more.

¹⁴ See Zoning Regulations Ch. 130.0.C.14, *supra* note 9; see also 33 U.S.C. § 1313(d)-(e); COMAR 26.08.02.04-1.

nevertheless failed to conduct the antidegradation review required by Maryland and Federal law when considering potential impacts to high quality, otherwise known as Tier II, state waters.¹⁵ As noted by the dissenting opinion in the Board hearing, this review is a nondiscretionary duty under the Clean Water Act prior to granting any approval to impact Tier II waters.¹⁶ In addition to the County's abdication of its duty to review, it failed to adequately assess the potential impacts of embalming fluids leaking from storage tanks at this site, or evaluate the potential impacts from the septic system which could serve up to 200 visitors on numerous daily occasions on nearby wells and waterways. Similarly, as part of the overall deprivation of adequate public process, Schneider and other opponents of the Mortuary were denied access to the Property for any independent environmental evaluation.

The Mortuary, as described in the planning documents approved by the County, would require disturbance of over an acre, but less than five acres of land. The plan improperly approved by DPZ would convert the Property from a mostly forested, pervious parcel, sloping more than 5 degrees to the Type II stream which has no assimilative capacity, and converting the forested, natural vegetation filter into a commercial development consisting mostly of impervious structures, roads and 98 parking spaces. As of January 1, 2015, MDE requires any individual or entity that plans to disturb more than an acre of land to apply for coverage under its General Permit for Stormwater Associated with Construction Activity ("GCP"), promulgated as part of the National Pollutant Elimination Discharge System ("NPDES") permitting scheme.¹⁷ Beginning construction without applying for and receiving such coverage is a violation of Sections 301 and 402 of the CWA.¹⁸ Therefore, the Mortuary requires coverage under the GCP. According to documents submitted on Donaldson's behalf, there is no plan to apply for a NPDES permit, and upon information and belief, no such application has been submitted to or approved by MDE.

In addition to the requirements to seek coverage under the GCP, Maryland regulations provide that "[w]here water quality is better than the minimum requirements specified by the water quality standards, that water quality *shall* be maintained."¹⁹ Prior

¹⁵ *Ibid.*

¹⁶ See Ex. 2, Board Minority Decision at 3, 6-7.

¹⁷ 40 C.F.R. § 122.26(b)(15).

¹⁸ Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that, "Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful." Section 402 of the Act, 33 U.S.C. § 1342, authorizes the NPDES program.

¹⁹ COMAR 26.08.02.04-1(A) (emphasis added). The full regulation may be found at: <http://www.dsd.state.md.us/comar/comarhtml/26/26.08.02.04-1.htm>. For a comprehensive summary of Maryland regulations applicable to water quality issues, see

to granting a permit which would impact a high-quality water, the state of Maryland must conduct what is known as an “antidegradation review.”²⁰ In general, an applicant in Maryland who seeks, *inter alia*, “discharge permits for discharge to Tier II waters that will result in a new, or an increased, permitted annual discharge of pollutants and a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts.”²¹ The regulations further provide that where “impacts are unavoidable, an applicant shall prepare and document a social and economic justification.”²² MDE must then determine, through a public process, “whether these discharges can be justified.”²³ Furthermore, where “a proposed amendment to a County Plan results in a new discharge or a major modification of an existing discharge to a Tier II water, the applicant shall perform a Tier II antidegradation review.”²⁴ Just as Donaldson has not applied for a NPDES permit for the construction of the Mortuary, both it and the County have utterly failed to conduct the requisite antidegradation review.²⁵ Likewise, upon information and belief, Donaldson has neither prepared nor submitted the SEJ to MDE for public comment and review. Accordingly, the County has failed to perform a nondiscretionary act or duty under the Clean Water Act,²⁶ and acted in contravention of the regulations promulgated by MDE to enact the standards and limitations therein,²⁷ as well as its own regulations, ordinances, and procedures.

On March 23, 2016, the County, through its Department of Inspections, Licenses and Permits, issued a grading permit to Donald Souder (“Souder”), of Souder Builders, Inc., for the construction of the Mortuary.²⁸ On March 26, 2016, Souder began placing construction equipment on the Property. No later than March 27, 2016, Donaldson,

<http://mde.maryland.gov/programs/Water/TMDL/Water%20Quality%20Standards/Pages/Programs/WaterPrograms/TMDL/wqstandards/index.aspx>.

²⁰ See 33 U.S.C. § 1313(d)-(e); COMAR 26.08.02.04-1.

²¹ COMAR 26.08.02.04-1(B). The antidegradation review process is defined in COMAR 26.08.02.04-1(G)-(H).

²² *Id.* The social and economic justification (“SEJ”) factors are laid out in COMAR 26.08.02.04-1(K)-(L).

²³ *Id.* See also, COMAR 26.08.02.04-1(M)-(N).

²⁴ COMAR 26.08.02.04-1(F)(2).

²⁵ Ex. 1, at 6 (“[T]he Board abdicated responsibility to properly consider the environmental factors regarding the Tier II stream watershed...”)

²⁶ See 33 U.S.C. § 1365(a)(2).

²⁷ See 33 U.S.C. § 1365(a)(1)(B).

²⁸ Ex. 3, List of Permits.

through its contractor Souder, caused clearing and grading to begin. Upon information and belief, no NPDES permit has been applied for or secured for these activities.

The United States Environmental Protection Agency (“EPA”) is the agency charged with overseeing the national implementation of the CWA, and it has promulgated criteria²⁹ for determining whether a new source³⁰ has commenced construction. Specifically, the EPA has determined that construction of a new source has commenced if the owner or operator of said source has:

“(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) *Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or*

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time.”³¹

Donaldson, by causing construction to commence, is therefore in violation of the Act, and will continue to be so unless and until it secures coverage under all required NPDES permits and complies with all the terms thereof.

* * *

Section 505(a)(1) of the Clean Water Act³² authorizes citizens to commence a civil action “against any person... who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” Under Section 309(d) of the CWA,³³ and 40 C.F.R. § 19, each of the above-described violations subjects the violator to a civil penalty of up to \$37,500 per day. In addition to such penalties, under Sections 505(a)

²⁹ See 40 C.F.R. § 122.29.

³⁰ As defined at 40 C.F.R. § 122.2.

³¹ 40 C.F.R. § 122.29(b)(4) (emphasis added); *see also* EPA 2012 Construction General Permit (CGP), Appendix A- Definitions and Acronyms (attached hereto as Ex. 4).

³² 33 U.S.C. § 1365(a)(1)

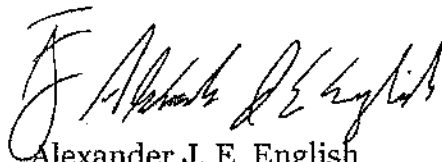
³³ 33 USC § 1319(d)

and (d) of the Act,³⁴ Mr. Schneider will seek injunctive relief, costs, attorney's fees, and any other relief as is permitted by law.

The above-described violations are neither exhaustive, nor comprehensive, and reflect only currently available information. Upon information and belief, these violations are ongoing and continuous. Mr. Schneider intends to sue for all violations, including those a) yet to be uncovered and/or b) committed after the date of this NOI.

Mr. Schneider believes that this Notice of Intent to sue sufficiently states grounds for filing suit. Accordingly, following the closure of the statutory sixty (60)-day notice period, he intends to file a citizen suit against you under Section 505(a) of the Clean Water Act, 33 USC § 1365(a), for all violations thereof.

Respectfully submitted,



Alexander J. E. English

Managing Attorney

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Encl.

Exhibits

CC

Gina McCarthy, Administrator, U.S. EPA

Shawn Garvin, Regional Administrator, EPA Region 3

Ben Grumbles, Secretary, MDE

³⁴ 33 USC §§ 1365(a) and (d)

EXHIBIT 1

IN THE MATTER OF	:	BEFORE THE
	:	
DONALDSON FUNERAL HOME	:	HOWARD COUNTY
	:	
Petitioner	:	BOARD OF APPEALS
	:	
	:	BA Case No. 10-001C
	:	
.....		

DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on January 10, February 28, March 1, March 8, May 3, May 29, May 31, June 14, August 2, August 14, August 23, October 9, October 25, November 1, November 27, November 29, 2012, January 22, January 24, January 31, March 5, March 14, April 4, and April 30, 2013 to hear and deliberate the amended petition of Donaldson Funeral Home (the “Petitioner”) for conditional use approval of a Funeral Home and Mortuary in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District filed pursuant to Section 131.N.22 of the Howard County Zoning Regulations (the “Zoning Regulations”).

All Board members were present at all hearings or present for voting purposes having reviewed all of the evidence submitted and having listened to a recording of any portion of the hearing for which the members were not present. Chairmen John Lederer and James Walsh presided over all hearings. Barry Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the Property as required by the Zoning Regulations.

EXHIBIT 1

5. Zoning Regulations Section 131.N.22.e requires that at least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. That section also defines the term "building envelope," providing that the building envelope is formed by the required structure setbacks from property lines and public street rights-of-way. Using this definition, 22.33 percent of the area within the building envelope will be green space, not used for buildings, parking area or driveways, in accordance with Zoning Regulations Section 131.N.22.e.

6. Crematoriums are permitted as accessory uses to a funeral home or mortuary under Zoning Regulations 131.N.22.f. Because no crematorium is proposed, this section is inapplicable.

ORDER

Based upon the foregoing, it is this 3rd day of July, 2013, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Donaldson Funeral Home for a Conditional Use for a Funeral Home and Mortuary in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED**, subject to the following conditions:

1. The conditional use shall apply only to the proposed funeral home and mortuary as described in the petition and as depicted on the Amended Conditional Use Plan dated August 15, 2012 and not to any other activities, uses or structures on the Property.

2. The Petitioner shall utilize a double-walled holding tank for embalming fluid wastewater with double walled pipes and leak sensors for the system.

3. The Petitioner shall construct (a) a deceleration lane at least 250 feet long for vehicles entering the Property from southbound Maryland Route 108; (b) an acceleration lane for

vehicles exiting the Property in the southbound direction; and (c) an appropriate left turn bypass lane for northbound Maryland Route 108 in the vicinity of the proposed access point for the Property.

4. The Property shall not be used as a crematorium without subsequent conditional use approval.

5. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

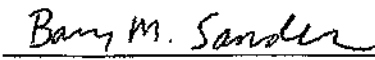
HOWARD COUNTY BOARD OF
APPEALS

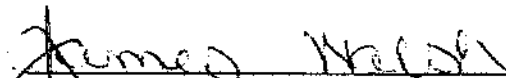

Alison Mathieson, Secretary

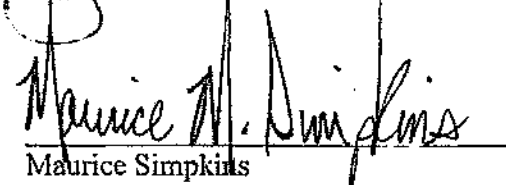

John Lederer, Chairperson


James Howard, Vice-Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Barry M. Sanders
Assistant County Solicitor


James Walsh


Maurice Simpkins

DISSENT - See
Henry Eagles *Minority*
Opinion

EXHIBIT 2

IN THE MATTER OF	:	BEFORE THE
	:	
DONALDSON FUNERAL HOME	:	HOWARD COUNTY
	:	
Petitioner	:	BOARD OF APPEALS
	:	
	:	BA Case No. 10-001C
	:	

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MINORITY DECISION

Petitioner filed an original Petition for a conditional use to the Howard County Hearing Authority on January 7, 2010, use of a Funeral Home (Donaldson Funeral Home) to be located on Route 108, 12540 Clarksville Pike, Clarksville, Maryland – a 3.207 acre site, trapezoid shaped property.

On March 17, 2010, the Department of Planning and Zoning (DPZ) issued a Technical Staff Report recommending denial of the Petition. The Hearing Examiner issued an Order, dated November 29, 2010 denying Petitioner's Petition. Petitioner filed an appeal to this Board on December 21, 2010.

Prior to proceedings conducted by the Board, Petitioner amended his conditional use plan, dated September 7, 2011. This showed a buffer of 75 feet to a Tier II stream watershed running through the northwest corner of the property.

During proceedings conducted by the Board, Petitioner again amended the Petition, Second Revised Petition, dated August 15, 2012 (Pet. Ex. 32), showing a change of the buffer from 75 feet to 100 feet, required by revision in the Zoning Regulations. This necessitated a change, too, in the layout of parking spaces on the plan to comport with the number of spaces required by the Zoning Regulations.

EXHIBIT 2

Board Procedural Rule §2.202 (e) provides:

If any substantive amendments to the petition are made before or during the hearing, the Board, either before or during the hearing, shall suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning [DPZ] and the Planning Board for further consideration.

The Board determined that the Tier II stream watershed buffer change from 75 to 100 feet was a substantive change, and remanded the Second Revised Petition to DPZ for an updated Technical Staff Report (TSR). In a letter to DPZ dated August 28, 2012, the “Board requested that a full re-evaluation of this plan be conducted for compliance with all applicable zoning regulations and that any additional agency comments be included in the update Technical Staff Report.” DPZ issued the updated TSR on September 24, 2012 to the Second Revised Petition and recommended approval. The stream buffer was not discussed of whether it was of adequate length, but that it may be counted as green space of a lot, as required by the Zoning Regulations, and can be included in the building envelope of the lot: “counting the stream buffer as green space is consistent with the concept that this area is a permeable portion of the site.” (TSR, p.3)

The issue raised here is whether the Board gave proper consideration to the adequacy of the length of the Tier II stream buffer. The General Plan Howard 2030, page 22, states that

The effectiveness of stream and wetland buffers depends on the buffer width, vegetation, and management practices. To provide the greatest benefit, *buffers should be wide enough to allow adequate filtering of overland runoff* and include adjacent steep slopes and highly erodible soils. [Emphasis added.]

Similarly, the Maryland Stream Health website states that “The problem with impervious surfaces is that they prevent natural soaking into the ground and slowly seeping into streams. Instead, rain water accumulates and flows rapidly into storm drains . . . resulting in flooding and severe bank erosion.”

EXHIBIT 2

Section 130 of the Zoning Regulations sets out the authority of the Hearing Authority. Subsection C provides that where “the Hearing Authority is called upon to decide certain issues, such Hearing Authority *shall examine the specific property involved* and the immediate neighborhood In deciding such matters, the *Hearing Authority shall give consideration*, among other things, to the following: C.5. The *legislative intent of these regulations* as provided in Section 100.A.” (Emphasis added.)

Section 100 A.7. provides: “*To insure that all development and land uses protect or enhance the natural, environmental, historic, architectural and other landscape resources of the County, especially highly fragile and environmental important features* such as floodplains, wetlands or steep slopes.” (Emphasis added.)

The Maryland Department of the Environment (DME) requires a Tier II antidegradation review. An applicant shall update an antidegradation review when applying for a permit. COMAR 26.08.02.04-1G. State law supersedes County Board of Appeals determinations. *Cf. Perdue Farms Inc. v. Hadder*, 109 Md. App. 582, 675 A.2d 577, 43 ERC 1538 (Ct. Spec. App. 1996). Permit application form presented at Protestant Ex. 41.

Specifically, pursuant to §130 of the Zoning Regulations, *supra*, it was and is incumbent on the Board when considering whether the Petition should have been granted in this case to determine that all legal requirements have been complied with.

Anthony D. Redman, having an extensive history of environmental planning – a Masters degree in environmental planning and 22 years as an environmental consultant, and Planning Director for various counties and States (Resume, Protestant Ex. 48) -- testified as to the need for DME review and likelihood that a 150 foot buffer would be required, rather than the 100 foot

EXHIBIT 2

buffer shown, because of impervious clay soil conditions on the property. (Hearing date Oct. 11, 2012):

My testimony is going to submit that in order to satisfy MDE requirement, on this site, that the buffer will need to be 150 feet. And that's because the soils in this area of the buffer are class C soils, which is a hydrologic unit that has a sufficiently high clay content that doesn't drain. The berm did filtrate or the bio retention area that the applicant has proposed, and has tonight indicated is tentative that it might change, that area is also in class C soils, meaning it's not suitable. It will not properly recharge the ground water table or mimic the existing conditions on the site, which was discussed earlier by Mr. Vogel.

This important testimony is not well set out in the majority opinion. (Op. at 17)

Robert Vogel, a civil engineer, developed Petitioner's site plan. Mr. Vogel had not previously worked on a funeral home site plan using a septic waste system. He testified that he used Maryland Department of Environment requirements. (Hearing, March 1, 2012) Mr. Vogel, while not an attorney, also testified that MDE approval is to be considered at the time of the site development plan stage. (Hearing, January 1, 2013)

On behalf of Petitioner, in contrast to Mr. Redman's testimony, Mark Burdick, an environmental consultant, "testified regarding several options that would be better for the watershed than merely increasing the stream buffer on the Property, such as planting trees on County open space lot or retrofitting and enhancing St. Louis Church's storm water management pond. Burdick testified that MDE would be more likely to request improvements such as these than to require a permanent increase in the stream buffer on the Property due to a temporary encroachment to install piping." (Petitioner's Mem. p.7) Mr. Burdick's testimony is similarly set out in the majority opinion. (Op. at 20) It is conjecture as to what MDE would be more likely to request, and says nothing about the clay soil condition of the property. It was necessary for Petitioner to submit the Plan to MDE for review prior to submitting the Plan to the Hearing Authority for a conditional use approval.

EXHIBIT 2

Richard Klein, having worked 18 years for the Department of Natural Resources (DNR), has expertise regarding effects of land use on aquatic systems. Mr. Klein testified that an applicant customarily approaches DNR before presenting a conditional use plan for approval. His opinion was that there was no way for environmental design requirements to be met with this plan to protect the uniquely sensitive area. (Hearing, Nov. 27, 2012).

Zachary Fisch, a civil engineer, testified that there is a requirement for the Petitioner to work with MDE respecting the Tier II stream. A MDE permit application must be filed for every development greater than one acre. The area of the stream buffer cannot be counted as part of the building envelope. Mr. Fisch understands “setback” as defined in Section 103, item 19 of the Zoning Regulations to include building setbacks *and* environmental setbacks that comports with the Subdivision and Land Development Regulations. Section 16.108.b.7 of these regulations defines “building envelope”: “The area of a lot in which the principal buildings shall be located. The envelope is formed by the building restriction lines.” Consequently, “green space” was not calculated correctly respecting the Second Revised Plan when the TSR of September 24, 2012, page 3, states that the term “building envelope” is not defined in the Zoning Regulations and so can be included in the area of the stream buffer as green space part of the building envelope. (Hearing, Nov. 27, 2012)

Mr. Vogel, in rebuttal, also stated that the stream buffer is not excluded from the building envelope. (Hearing, Jan. 31, 2013) Yet, only after Mr. Fisch presented his testimony did Mr. Vogel decide to develop the Second Revised Plan to increase the stream buffer to 100 feet. (Hearing, Oct. 9, 2012)

In his testimony, Mr. Fisch referred to a matter, “the Lilly Pond case,” where MDE required the stream buffer to extend beyond the 100 foot zoning requirement. Mr. Fisch noted,

too, that the TSR, p.3, last paragraph, inferentially indicates that a stream buffer increased to 150 feet by DME would decimate the Second Revised Plan.

While the Second Revised Plan technically complies with the specific requirements of the Zoning Regulations, the Department of Planning and Zoning acknowledges that the incremental changes in the revised plans, *especially with regard to the increases in the stream buffer and parking requirements and the 50 foot northern property setback are factors which increase the difficulty of accommodating the proposed development on the site.* [Emphasis added.]

The Board granted the Petition in this case notwithstanding that Petitioner, before seeking approval for its proposed conditional use, had not submitted an application for a DME Tier II antidegradation review of the Tier II watershed buffer on the proposed site for DME's determination of whether the 100 foot buffer is adequate.

While the Board previously had considered that an increase in the stream buffer for the Second Revised Plan from 75 feet to 100 feet was a substantial change in the Plan to warrant further review by DPZ, anomalously the Board disregarded a potential change of buffer length by DME from 100 feet to 150 feet – twice the length of the original 75 foot buffer specified – as not being a substantial change to the Plan. In the face of this, too, the Board voted to grant the Petition.

The effect is that the Board prematurely granted the Petition where potentially the Plan may subsequently be determined not to be in compliance with Zoning Regulations and State law. And the Board, then, will no longer have jurisdiction over the case. In doing so, the Board abdicated responsibility to properly consider the environmental factors regarding the Tier II stream watershed in accordance with §130 C of the Zoning Regulations, and whether the Plan submitted by Petitioner for a conditional use is viable at all. The Board is relying on the Planning Board to do so when reviewing Petitioner's Site Development Plan for the conditional use.

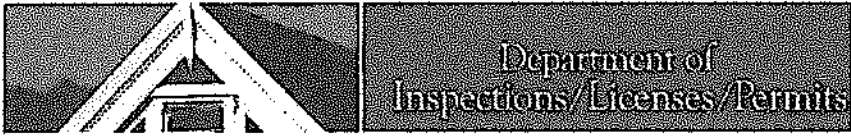
EXHIBIT 2

In the absence of Petitioner seeking review by DME of the Tier II stream watershed buffer before applying for conditional use approval, the Petition for a conditional use approval in this case should properly have been denied by the Board.

Date:

July 3, 2013


Henry Eigles, Member
Howard County Board of Appeals



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Building B16001090:
Commercial Miscellaneous Permit

[Add to collection](#)

Work Location

12540 CLARKSVILLE PK
CLARKSVILLE MD 21029

Application Details

Applicant:

DAVID A. D'ORAZIO
BOB PORTER COMPANY, INC.
7774 WOODBINE ROAD
WOODBINE, MD, 21797
Primary Phone: 410-552-6210
DDORAZIO@PORTERCO.NET

Licensed Professional:

DAVID A. D'ORAZIO
BOB PORTER COMPANY, INC.
7774 WOODBINE ROAD
WOODBINE, MD, 21797
Primary Phone: 410-552-6210
Contractor 06944539

Project Description:

BOB PORTER CONSTRUCTION COMPANY/ INSTALL
(1) 8' X 28' TEMPORARY CONSTRUCTION TRAILER

Owner:

DONALDSON PROPERTIES NO 3 LLC
313 TALBOTT AVE
LAUREL MD 20707

▼ More Details

☒ Related Contacts

Contact information

KEVIN FINN
1716 ELKHART ROAD
GOSHEN, IN, 46526
Primary Phone: 574-537-1300
KEVIN@KMFENG.COM

☒ Additional Information

Please Enter Estimated Construction Cost Dollar Amount
\$2,661.00

☒ Application Information

BLDG CN-CHAR

Interior Completion: No
Tenant: BOB PORTER COMPANY, INC.
Pool: No

BLDG CN-UTIL

Geothermal: No

☒ Parcel Information

Property ID

864242

Tax Map:

34

Stat Area:

5-04A

State Tax Id:

1405341868

ADC Map:

4933-J8

▼ Fees

Paid:

Date	Invoice Number	Amount
03/23/2016	439693	\$100.00
03/23/2016	439693	\$10.00

Total paid fees: \$110.00

▼ Inspections

Upcoming

You have not added any inspections.

Click the link above to schedule or request one.

Completed

There are no completed inspections on this record.

▼ Processing Status

✓ ▼ Application Acceptance

Assigned to TBD

Marked as Accepted on 03/23/2016 by Laura Hurman

Assigned to TBD

Marked as Pending on 03/23/2016 by Laura Hurman

Plumbing Mechanical Review

✓ ▼ Building Review

Assigned to Debbie Whalen

Marked as Approved on 03/23/2016 by Debbie Whalen

✓ ▼ Dev Engineering

Assigned to TBD

Marked as Approved on 03/29/2016 by Diana Rose

✓ ▼ Health Dept

Assigned to TBD

☒ Marked as Approved on 03/31/2016 by Health Department

Comment: H.O.

✓ ▼ Zoning

Assigned to TBD

Marked as Approved on 04/01/2016 by Annette Merson

✓ ▼ Electrical Review

Assigned to admin administrator

Marked as Review Not Required on 03/23/2016 by Debbie Whalen

✓ ▼ Building Permit Issuance

Assigned to TBD

Marked as Issued on 04/04/2016 by Amanda Hill

➤ Final Building

C of C

➤ Attachments

➤ Related Permits

[Home](#) [Building](#) [Fire](#) [Licenses](#)

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Building G16000055: Commercial Grading Permit

[Add to collection](#)

Work Location

12540 CLARKSVILLE PK
CLARKSVILLE MD 21029

Application Details

Applicant:

DONALD SOUDER
SOUDER BUILDERS INC
13332 CLARKSVILLE PIKE SUITE A
HIGHLAND, MD, 20777
Primary Phone:301-807-4480
SOUDERINC@VERIZON.NET

Licensed Professional:

DONALD SOUDER
SOUDER BUILDERS INC
13332 CLARKSVILLE PIKE SUITE A
HIGHLAND, MD, 20777
Primary Phone:301-807-4480
Fax:301-854-0166
MHIC Ind 08010002980

Project Description:

DONALDSON FUNERAL HOME/ GRADING &
SEDIMENT CONTROLS FOR NEW COMMERCIAL
BUILDING & ASSOCIATED UTILITIES - PARCEL 45

Owner:

DONALDSON PROPERTIES NO 3 LLC
313 TALBOTT AVENUE
LAUREL MD 20707
Primary Phone:301-725-1690

▼ More Details

☐ Related Contacts

Contact information

DONALD SOUDER
SOUDER BUILDERS INC
13332 CLARKSVILLE PIKE SUITE A
HIGHLAND, MD, 20777
Primary Phone:301-807-4480
SOUDERINC@VERIZON.NET

☐ Additional Information

Please Enter Estimated Construction Cost Dollar Amount

\$44,588.00

☐ Parcel Information

Property ID

864242

Tax Map:

34

Stat Area:

5-04A

State Tax Id:

1405341868

ADC Map:

4933-J8

▼ Fees

Paid:

Date	Invoice Number	Amount
08/02/2013	328393	\$50.00
08/02/2013	328393	\$5.00

Total paid fees: \$55.00

▼ Inspections

Upcoming

*You have not added any inspections.
Click the link above to schedule or request one.*

Completed

There are no completed inspections on this record.

▼ Processing Status

✓ ▼ Application Acceptance

Assigned to TBD

Marked as Accepted on 08/02/2013 by Laura Hurman

Assigned to TBD

Marked as Pending on 08/02/2013 by Laura Hurman

✓ ▼ Building Review

Assigned to admin administrator

Marked as Approved on 08/02/2013 by Dan Swinder

✓ ▼ Building Permit Issuance

Assigned to TBD

Marked as Issued on 08/02/2013 by Laura Hurman

✓ ▼ Final Building

Assigned to TBD

Marked as Approved on 11/05/2013 by Thomas Frey

✓ ▼ C of C

Assigned to TBD

Marked as Completed on 11/05/2013 by Thomas Frey

▼ Attachments

Attachment List

<u>Name</u>	<u>Record ID</u>	<u>Record Type</u>	<u>Entity Type</u>	<u>Type</u>	<u>Size</u>	<u>Date</u>	<u>Ac</u>
No records found.							

▶

▼ Related Permits

No records found.

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Building E16001114:
Commercial Electrical Permit

[Add to collection](#)

Work Location

12540 CLARKSVILLE PK
CLARKSVILLE MD 21029

Application Details

Applicant:

RAYMOND G. BAER
BAER'S ELECTRICAL SERVICE
9936 HUGHES AVE
LAUREL, MD, 20723
Primary Phone:3014902886
Fax:2406871429
baerelectric@comcast.net

Licensed Professional:

RAYMOND G. BAER
BAER'S ELECTRICAL SERVICE
9936 HUGHES AVE
LAUREL, MD, 20723
Primary Phone:301-490-2886
Secondary Phone:240-687-1429
HC Elec State ES 01347

Project Description:

DONALDSON'S FUNERAL HOME/ WIRE 200 AMP
TEMPORARY POLE SERVICE; INSTALL RECEPTACLE
3014902886

Owner:

JAY DONALDSON
313 TALBOTT AVE
LAUREL MD 20707
Primary Phone:3017251690

▼ More Details

☒ **Application Information**

COMMERCIAL ELECTRIC

Permit Type: Miscellaneous
Miscellaneous Pole Construction
Permit Type Description:
Quantity: 1
Tenant: DONALDSON'S FUNERAL HOME
Field Contact Name: N/A
Field Contact Phone N/A
No:
Utility Company: BGE

☒ **Application Information Table**

OUTLETS

TYPE OF OUTLET: Receptacles
QUANTITY FOR EACH TYPE: 1

☒ **Parcel Information**

Property ID

864242

Tax Map:

34

Stat Area:

S-04A

State Tax Id:

1405341868

ADC Map:

4933-J8

▼ Fees

Paid:

Date	Invoice Number	Amount
------	----------------	--------

08/02/2013	328393	\$50.00
08/02/2013	328393	\$5.00

Total paid fees: \$55.00

▼ Inspections

Upcoming

You have not added any inspections.

Click the link above to schedule or request one.

Completed (6)

Fail - 1; Pass - 1; Rescheduled - 4

Rescheduled 301-BGE Service Release (2421806)

[View Details](#)

Rescheduled by: RAYMOND BAER on 03/05/2016 at 5:15 AM

Rescheduled 301-BGE Service Release (2421941)

[View Details](#)

Rescheduled by: admin administrator on 03/06/2016 at 8:35 PM

Rescheduled 301-BGE Service Release (2422018)

[View Details](#)

Rescheduled by: RAYMOND BAER on 03/07/2016 at 5:15 AM

Fail 301-BGE Service Release (2422048)

[View Details](#)

Result by: Steven Meyers on 03/10/2016 at 9:33 AM

Rescheduled 301-BGE Service Release (2424591)

[View Details](#)

Rescheduled by: RAYMOND BAER on 03/11/2016 at 5:15 AM

< Prev 1 2 Next >

▼ Processing Status

✓ ▼ Application Acceptance

Assigned to TBD

Marked as Accepted on 08/02/2013 by Laura Hurman

Assigned to TBD

Marked as Pending on 08/02/2013 by Laura Hurman

✓ ▼ Building Review

Assigned to admin administrator

Marked as Approved on 08/02/2013 by Dan Swinder

✓ ▼ Building Permit Issuance

Assigned to TBD

Marked as Issued on 08/02/2013 by Laura Hurman

✓ ▼ Final Building

Assigned to TBD

Marked as Approved on 11/05/2013 by Thomas Frey

✓ ▼ C of C

Assigned to TBD

Marked as Completed on 11/05/2013 by Thomas Frey

► Attachments

▼ Related Permits

No records found.

[Home](#) [Building](#) [Fire](#) [Licenses](#)

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Building B14004202:
Commercial New Building Permit

[Add to collection](#)

Work Location

12540 CLARKSVILLE PK
CLARKSVILLE MD 21029

Application Details

Applicant:

DONALD SOUDER
SOUDER BUILDERS INC
13330 CLARKSVILLE PIKE
HIGHLAND, MD, 20777
Primary Phone:301-854-0166
SOUDERINC@VERIZON.NET

Licensed Professional:

DONALD SOUDER
SOUDER BUILDERS INC
13330 CLARKSVILLE PIKE
HIGHLAND, MD, 20777
Primary Phone:301-854-0166
Fax:301-854-0221
Contractor 13855133

Project Description:

DONALDSON FUNERAL HOME/ CONSTRUCT NEW 2-
STORY FUNERAL HOME

Owner:

DONALDSON PROPERTIES NO 3 LLC
313 TALBOTT AVENUE
LAUREL MD 20707
Primary Phone:301-725-1690

▼ **More Details**

☒ **Related Contacts**

Contact information

ROBERT C KILLINGSWORTH
JST ARCHITECTS
2919 WELBORN STREET STE 101
DALLAS, TX, 75219
Primary Phone:214-522-4033
CGRIFFITHS@JSTARCHITECT.COM

☒ **Additional Information**

Please Enter Estimated Construction Cost Dollar Amount
\$2,500,000.00

☒ **Application Information**

BLDGCN-CHAR

Interior Completion:	No
Tenant:	DONALDSON FUNERAL HOME
Area of Construction - SQ FT:	19321
Pool:	No

BLDGCN-UTIL

Geothermal: No

☒ **Parcel Information**

Property ID
864242

State Tax Id:
1405341868

Tax Map:
34
Stat Area:
5-04A

ADC Map:
4933-J8

▼ Fees

Paid:

Date	Invoice Number	Amount
03/23/2016	439693	\$100.00
03/23/2016	439693	\$10.00

Total paid fees: \$110.00

▼ Inspections

Upcoming

*You have not added any inspections.
Click the link above to schedule or request one.*

Completed

There are no completed inspections on this record.

▼ Processing Status

- ✓ ▼ Application Acceptance
 - Assigned to TBD
 - Marked as Accepted on 03/23/2016 by Laura Hurman
- ✓ ▼ Plumbing Mechanical Review
 - Assigned to TBD
 - Marked as Pending on 03/23/2016 by Laura Hurman
- ✓ ▼ Building Review
 - Assigned to Debbie Whalen
 - Marked as Approved on 03/23/2016 by Debbie Whalen
- ✓ ▼ Dev Engineering
 - Assigned to TBD
 - Marked as Approved on 03/29/2016 by Diana Rose
- ✓ ▼ Health Dept
 - Assigned to TBD
 - ☒ Marked as Approved on 03/31/2016 by Health Department
 - Comment: H.O.
- ✓ ▼ Zoning
 - Assigned to TBD
 - Marked as Approved on 04/01/2016 by Annette Merson
- ✓ ▼ Electrical Review
 - Assigned to admin administrator
 - Marked as Review Not Required on 03/23/2016 by Debbie Whalen
- ✓ ▼ Building Permit Issuance
 - Assigned to TBD
 - Marked as Issued on 04/04/2016 by Amanda Hill
- Final Building
 - C of C

▼ Attachments

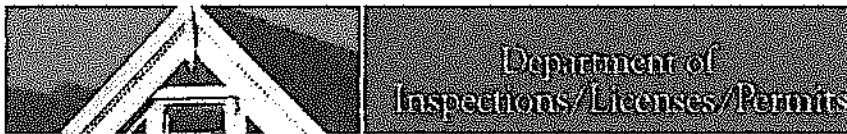
Attachment List

<u>Name</u>	<u>Record ID</u>	<u>Record Type</u>	<u>Entity Type</u>	<u>Type</u>	<u>Size</u>	<u>Date</u>	<u>Ac</u>
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No records found.

▼ **Related Permits**

No records found.



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Building B13002951:
Residential Demolition Permit

[Add to collection](#)

Work Location

12540 CLARKSVILLE PK
CLARKSVILLE MD 21029

Application Details

Applicant:

DONALD SOUDER
SOUDER BUILDERS INC
13330 CLARKSVILLE PIKE, P.O. BOX 153
HIGHLAND, MD, 20777
Primary Phone:301-807-4480
SOUDERINC@VERIZON.NET

Licensed Professional:

DONALD SOUDER
SOUDER BUILDERS INC
9335 OLD SCAGGSVILLE ROAD
LAUREL, MD, 20723-0000
Primary Phone:301-725-5772
Fax:301-725-5774
MHIC Ind 08010002980

Project Description:

DEMO EXISTING STRUCTURE

Owner:

DONALDSON PROPERTIES III
313 TALBOTT AVE.
LAUREL MD 20707
Primary Phone:240-508-6789

▼ More Details

☐ Additional Information

Please Enter Estimated Construction Cost Dollar Amount
\$5,000.00

☐ Parcel Information

Property ID

866882

Tax Map:

34

Stat Area:

5-04B

State Tax Id:

1405376084

ADC Map:

4933-J8

▼ Fees

Paid:

Date	Invoice Number	Amount
08/02/2013	328393	\$50.00
08/02/2013	328393	\$5.00

Total paid fees: \$55.00

▼ Inspections

Upcoming

You have not added any inspections.
Click the link above to schedule or request one.

Completed (2)

Pass - 1; Rescheduled - 1

Rescheduled 205-Final Building (1984077)

[View Details](#)

Rescheduled by: Linda Reger on 10/31/2013 at 5:16 AM

Pass 205-Final Building (2033582)

[View Details](#)

Result by: Thomas Frey on 11/05/2013 at 12:22 PM

▼ Processing Status

✓ ▼ Application Acceptance

Assigned to TBD

Marked as Accepted on 08/02/2013 by Laura Hurman

Assigned to TBD

Marked as Pending on 08/02/2013 by Laura Hurman

✓ ▼ Building Review

Assigned to admin administrator

Marked as Approved on 08/02/2013 by Dan Swinder

✓ ▼ Building Permit Issuance

Assigned to TBD

Marked as Issued on 08/02/2013 by Laura Hurman

✓ ▼ Final Building

Assigned to TBD

Marked as Approved on 11/05/2013 by Thomas Frey

✓ ▼ C of C

Assigned to TBD

Marked as Completed on 11/05/2013 by Thomas Frey

▼ Attachments

Attachment List

<u>Name</u>	<u>Record ID</u>	<u>Record Type</u>	<u>Entity Type</u>	<u>Type</u>	<u>Size</u>	<u>Date</u>	<u>Ac</u>
No records found.							

▼ Related Permits

No records found.

Appendix A - Definitions and Acronyms

Definitions

"Action Area" – all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of the Endangered Species Act requirements, the following areas are included in the definition of action area:

- The areas on the construction site where stormwater discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity or where grading causes stormwater to flow into a small wetland or other habitat that is on the site that contains listed species.)
- The areas where stormwater discharges flow from the construction site to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.)
- The areas where stormwater from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)
- The areas upstream and/or downstream from the stormwater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

"Agricultural Land" - cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for the production of livestock.

"Antidegradation Policy" or "Antidegradation Requirements" - the water quality standards regulation that requires States and Tribes to establish a three-tiered antidegradation program:

1. Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.
2. Tier 2 maintains and protects "high quality" waters -- water bodies where existing conditions are better than necessary to support CWA § 101(a)(2) "fishable/swimmable"

uses. Water quality can be lowered in such waters. However, State and Tribal Tier 2 programs identify procedures that must be followed and questions that must be answered before a reduction in water quality can be allowed. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

3. Tier 3 maintains and protects water quality in outstanding national resource waters (ONRWs). Except for certain temporary changes, water quality cannot be lowered in such waters. ONRWs generally include the highest quality waters of the United States. However, the ONRW classification also offers special protection for waters of exceptional ecological significance, i.e., those which are important, unique, or sensitive ecologically. Decisions regarding which water bodies qualify to be ONRWs are made by States and authorized Indian Tribes.

"Arid Areas" – areas with an average annual rainfall of 0 to 10 inches.

"Bank" (e.g., stream bank or river bank) – the rising ground bordering the channel of a water of the U.S.

"Bluff" – a steep headland, promontory, riverbank, or cliff.

"Borrow Areas" – the areas where materials are dug for use as fill, either onsite or off-site.

"Bypass" – the intentional diversion of waste streams from any portion of a treatment facility. See 40 CFR 122.41(m)(1)(i).

"Cationic Treatment Chemical" – polymers, flocculants, or other chemicals that contain an overall positive charge. Among other things, they are used to reduce turbidity in stormwater discharges by chemically bonding to the overall negative charge of suspended silts and other soil materials and causing them to bind together and settle out. Common examples of cationic treatment chemicals are chitosan and cationic PAM.

"Commencement of Earth-Disturbing Activities" - the initial disturbance of soils (or 'breaking ground') associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

"Commencement of Pollutant-Generating Activities" – at construction sites (for the purposes of this permit) occurs in any of the following circumstances:

- Clearing, grubbing, grading, and excavation has begun;
- Raw materials related to your construction activity, such as building materials or products, landscape materials, fertilizers, pesticides, herbicides, detergents, fuels, oils, or other chemicals have been placed at your site;
- Use of authorized non-stormwater for washout activities, or dewatering activities, have begun; or
- Any other activity has begun that causes the generation of or the potential generation of pollutants.

"Construction Activities" – earth-disturbing activities, such as the clearing, grading, and excavation of land.

"Construction and Development Effluent Limitations and New Source Performance Standards" (C&D Rule) – as published in 40 CFR § 450 is the regulation requiring effluent limitations guidelines

(ELG's) and new source performance standards (NSPS) for controlling the discharge of pollutants from construction sites.

"Construction Site" – the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether. The construction site is often a smaller subset of the lot or parcel within which the project is taking place.

"Construction Support Activities" – a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

"Construction Waste" – discarded material (such as packaging materials, scrap construction materials, masonry products, timber, steel, pipe, and electrical cuttings, plastics, and styrofoam).

"Conveyance Channel" – a temporary or permanent waterway designed and installed to safely convey stormwater flow within and out of a construction site.

"Corrective Action" – for the purposes of the permit, any action taken to (1) repair, modify, or replace any stormwater control used at the site; (2) clean up and dispose of spills, releases, or other deposits found on the site; and (3) remedy a permit violation.

"Critical Habitat" – as defined in the Endangered Species Act at 16 U.S.C. 1531 for a threatened or endangered species, (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"CWA" – the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

"Dewatering" – the act of draining rainwater and/or groundwater from building foundations, vaults, and trenches.

"Discharge" – when used without qualification, means the "discharge of a pollutant."

"Discharge of a Pollutant" – any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.

"Discharge Point" – for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the construction site.

"Discharge-Related Activity" – activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged.

"Discharge to an Impaired Water" – for the purposes of this permit, a discharge to an impaired water occurs if the first water of the U.S. to which you discharge is identified by a State, Tribe, or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which you discharge is the first water of the U.S. that receives the stormwater discharge from the storm sewer system.

"Domestic Waste" – for the purposes of this permit, typical household trash, garbage or rubbish items generated by construction activities.

"Drainageway" – an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

"Drought-Stricken Area" – for the purposes of this permit, an area in which the National Oceanic and Atmospheric Administration's U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) "Drought to persist or intensify", (2) "Drought ongoing, some improvement", (3) "Drought likely to improve, impacts ease", or (4) "Drought development likely". See http://www.cpc.ncep.noaa.gov/products/expert_assessment/season_drought.gif.

"Earth-Disturbing Activity" or "Land-Disturbing Activity" – actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

"Effective Operating Condition" – for the purposes of this permit, a stormwater control is kept in effective operating condition if it has been implemented and maintained in such a manner that it is working as designed to minimize pollutant discharges.

"Effluent Limitations" – for the purposes of this permit, any of the Part 2 or Part 3 requirements.

"Effluent Limitations Guideline" (ELG) – defined in 40 CFR § 122.2 as a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

"Electronic Notice of Intent" (eNOI) – EPA's online system for submitting electronic Construction General Permit forms.

"Eligible" – for the purposes of this permit, refers to stormwater and allowable non-stormwater discharges that are authorized for coverage under this general permit.

"Emergency-Related Project" – a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.

"Endangered Species" – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose

protection under the provisions of this Act would present an overwhelming and overriding risk to man.

"Excursion" – a measured value that exceeds a specified limit.

"Existing Project" – a construction project that commenced construction activities prior to February 16, 2012 (April 9, 2012 for the State of Idaho, except for Indian Country; April 13, 2012 for areas in the state of Washington, except for Indian Country, subject to construction activity by a Federal Operator; May 9, 2012 for projects in the following areas: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin).

"Exit Points" – any points of egress from the construction site to be used by vehicles and equipment during construction activities.

"Exposed Soils" – for the purposes of this permit, soils that as a result of earth-disturbing activities are left open to the elements.

"Federal Operator" – an entity that meets the definition of "Operator" in this permit and is either any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government of the United States, or another entity, such as a private contractor, performing construction activity for any such department, agency, or instrumentality.

"Final Stabilization" – on areas not covered by permanent structures, either (1) vegetation has been established, or for arid or semi-arid areas, will be established that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover, or (2) non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site.

"Hazardous Materials" or "Hazardous Substances" or "Hazardous or Toxic Waste" – for the purposes of this permit, any liquid, solid, or contained gas that contain properties that are dangerous or potentially harmful to human health or the environment. See also 40 CFR §261.2.

"Historic Property" – as defined in the National Historic Preservation Act regulations means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

"Impaired Water" or "Water Quality Impaired Water" or "Water Quality Limited Segment" – for the purposes of this permit, waters identified as impaired on the CWA Section 303(d) list, or waters with an EPA-approved or established TMDL. Your construction site will be considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA pursuant to Section 303(d) of the CWA as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

"Impervious Surface" – for the purpose of this permit, any land surface with a low or no capacity for soil infiltration including, but not limited to, pavement, sidewalks, parking areas and driveways, packed gravel or soil, or rooftops.

"Indian Country" or "Indian Country Lands" – defined at 40 CFR §122.2 as:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
2. All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same.

"Infeasible" – for the purpose of this permit, infeasible means not technologically possible or not economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conflict with state water rights law.

"Install" or "Installation" – when used in connection with stormwater controls, to connect or set in position stormwater controls to make them operational.

"Intermittent (or Seasonal) Stream" – one which flows at certain times of the year when groundwater provides water for stream flow, as well as during and immediately after some precipitation events or snowmelt.

"Jar test" – a test designed to simulate full-scale coagulation/flocculation/sedimentation water treatment processes by taking into account the possible conditions.

"Landward" – positioned or located away from a waterbody, and towards the land.

"Level Spreader" – a temporary stormwater control used to spread stormwater flow uniformly over the ground surface as sheet flow to prevent concentrated, erosive flows from occurring.

"Linear Project" – includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

"Minimize" – to reduce and/or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

"Municipal Separate Storm Sewer System" or "MS4" – defined at 40 CFR §122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

"National Pollutant Discharge Elimination System" (NPDES) – defined at 40 CFR §122.2 as the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an 'approved program.'

"Native Topsoil" – the uppermost layer of naturally occurring soil for a particular area, and is often rich in organic matter, biological activity, and nutrients.

"Native Vegetation" – the species of plants that have developed for a particular region or ecosystem and are considered endemic to that region or ecosystem.

"Natural Buffer" – for the purposes of this permit, an area of undisturbed natural cover surrounding surface waters within which construction activities are restricted. Natural cover includes the vegetation, exposed rock, or barren ground that exists prior to commencement of earth-disturbing activities.

"Natural Vegetation" – vegetation that occurs spontaneously without regular management, maintenance or species introductions, removals, and that generally has a strong component of native species.

"New Operator of a New or Existing Project" – an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction project.

"New Project" – a construction project that commences construction activities on or after February 16 (or on or after April 9, 2012 for the State of Idaho, except for Indian Country; April 13, 2012 for areas in the state of Washington, except for Indian Country, subject to construction activity by a Federal Operator; May 9, 2012 for projects in the following areas: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin).

"New Source" – for the purpose of this permit, a construction project that commenced construction activities after February 1, 2010.

"New Source Performance Standards (NSPS)" – for the purposes of this permit, NSPS are technology-based standards that apply to construction sites that are new sources under 40 CFR 450.24.

"Non-Stormwater Discharges" – discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, vehicle wash water, sanitary wastes, concrete washout water, paint wash water, irrigation water, or pipe testing water.

"Non-Turbid" – a discharge that does not cause or contribute to an exceedence of turbidity-related water quality standards.

"Notice of Intent" (NOI) – the form (electronic or paper) required for authorization of coverage under the Construction General Permit.

"Notice of Termination" (NOT) – the form (electronic or paper) required for terminating coverage under the Construction General Permit.

"Operational" – for the purpose of this permit, stormwater controls are made "operational" when they have been installed and implemented, are functioning as designed, and are properly maintained.

"Operator" – for the purpose of this permit and in the context of stormwater discharges associated with construction activity, any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of stormwater associated with construction activity.

"Ordinary High Water Mark" – the line on the shore established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and/or the presence of litter and debris.

"Outfall" – see "Discharge Point."

"Permitting Authority" – for the purposes of this permit, EPA, a Regional Administrator of EPA, or an authorized representative.

"Point(s) of Discharge" – see "Discharge Point."

"Point Source" – any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" – defined at 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

"Pollutant-Generating Activities" – at construction sites (for the purposes of this permit), those activities that lead to or could lead to the generation of pollutants, either as a result of earth-disturbance or a related support activity. Some of the types of pollutants that are typically found at construction sites are:

- sediment;
- nutrients;
- heavy metals;
- pesticides and herbicides;
- oil and grease;
- bacteria and viruses;

- trash, debris, and solids;
- treatment polymers; and
- any other toxic chemicals.

"Pollution Prevention Measures" – stormwater controls designed to reduce or eliminate the addition of pollutants to construction site discharges through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other actions.

"Polymers" – for the purposes of this permit, coagulants and flocculants used to control erosion on soil or to enhance the sediment removal capabilities of sediment traps or basins. Common construction site polymers include polyacrylamide (PAM), chitosan, alum, polyaluminum chloride, and gypsum.

"Prohibited Discharges" – discharges that are not allowed under this permit, including:

1. Wastewater from washout of concrete;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Soaps or solvents used in vehicle and equipment washing;
5. Toxic or hazardous substances from a spill or other release; and
6. Waste, garbage, floatable debris, construction debris, and sanitary waste from pollutant-generating activities.

"Provisionally Covered Under this Permit" – for the purposes of this permit, EPA provides temporary coverage under this permit for emergency-related projects prior to receipt of a complete and accurate NOI. Discharges from earth-disturbing activities associated with the emergency-related projects are subject to the terms and conditions of the permit during the period of temporary coverage.

"Receiving Water" – a "Water of the United States" as defined in 40 CFR § 122.2 into which the regulated stormwater discharges.

"Run-On" – sources of stormwater that drain from land located upslope or upstream from the regulated site in question.

"Semi-Arid Areas" – areas with an average annual rainfall of 10 to 20 inches.

"Site" – for construction activities, the land or water area where earth-disturbing activities take place, including construction support activities.

"Small Construction Activity" – defined at 40 CFR § 122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one (1) acre and less than five (5) acres of land or will disturb less than one (1) acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one (1) acre and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.

"Small Residential Lot" – for the purpose of this permit, a lot being developed for residential purposes that will disturb less than 1 acre of land, but is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre.

"Snowmelt" – the conversion of snow into overland stormwater and groundwater flow as a result of warmer temperatures.

"Spill" – for the purpose of this permit, the release of a hazardous or toxic substance from its container or containment.

"Stabilization" – the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process.

"Steep Slopes" – where a state, Tribe, local government, or industry technical manual (e.g., stormwater BMP manual) has defined what is to be considered a "steep slope", this permit's definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.

"Storm Sewer System" – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater.

"Stormwater" – stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater Control Measure" - refers to any stormwater control, BMP, or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States.

"Stormwater Controls" – see "Stormwater Control measure."

"Stormwater Discharge Associated with Construction Activity" – as used in this permit, a discharge of pollutants in stormwater to waters of the United States from areas where land-disturbing activities (e.g., clearing, grading, or excavation) occur, or where construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck chute washdown, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants), are located.

"Stormwater Inlet" – a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes.

"Stormwater Team" – the group of individuals responsible for oversight of the development and modifications of the SWPPP, and oversight of compliance with the permit requirements. The individuals on the "Stormwater Team" must be identified in the SWPPP.

"Storm Event" – a precipitation event that results in a measurable amount of precipitation.

"Storm Sewer" – a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces.

"Subcontractor" – for the purposes of this permit, an individual or company that takes a portion of a contract from the general contractor or from another subcontractor.

"Surface Water" – a "Water of the United States" as defined in 40 CFR §122.2.

"SWPPP" (Stormwater Pollution Prevention Plan) – a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

"Temporary Stabilization" – a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

"Thawing Conditions" – for the purposes of this permit, thawing conditions are expected based on the historical likelihood of two or more days with daytime temperatures greater than 32°F. This date can be determined by looking at historical weather data. Note: the estimation of thawing conditions is for planning purposes only. During construction the permittee will be required to conduct site inspections based upon actual conditions (i.e., if thawing conditions occur sooner than expected, the permittee will be required to conduct inspections at the regular frequency).

"Threatened Species" – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

"Tier 2 Waters" – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(2), those waters that are characterized as having water quality that exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

"Tier 2.5 Waters" – for antidegradation purposes, those waters designated by States or Tribes as requiring a level of protection equal to and above that given to Tier 2 waters, but less than that given Tier 3 waters. Some States have special requirements for these waters.

"Tier 3 Waters" – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by states as having high quality waters constituting an Outstanding Natural Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

"Total Maximum Daily Load" or "TMDL" – the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

"Toxic Waste" – see "Hazardous Materials."

"Turbidity" – a condition of water quality characterized by the presence of suspended solids and/or organic material.

"Uncontaminated Discharge" – a discharge that does not cause or contribute to an exceedence of applicable water quality standards.

"Upland" - the dry land area above and 'landward' of the ordinary high water mark.

"Upset" – Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

"Water-Dependent Structures" – structures or facilities that are required to be located directly adjacent to a waterbody or wetland, such as a marina, pier, boat ramp, etc.

"Water Quality Standards" – defined in 40 CFR § 131.3, and are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States, water quality criteria for such waters based upon such uses, and an antidegradation policy to protect high-quality waters. Water quality standards protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

"Waters of the United States" – defined at 40 CFR § 122.2 as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

In applying this definition, EPA will consider applicable Court cases and current guidance.

"Wetland" – those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. On-site evaluations are typically required to confirm the presence and boundaries of wetlands.

"Work day" – for the purposes of this permit, a work day is a calendar day on which construction activities will take place.

Acronyms

C&D – Construction & Development
CGP – Construction General Permit
CFR – Code of Federal Regulations
CWA – Clean Water Act
eNOI – Electronic Notice of Intent
EPA – United States Environmental Protection Agency
ESA – Endangered Species Act
FWS – United States Fish and Wildlife Service
MS4 – Municipal Separate Storm Sewer System
MSGP – Multi-Sector General Permit
NMFS – United States National Marine Fisheries Service
NOI – Notice of Intent
NOT – Notice of Termination
NPDES – National Pollutant Discharge Elimination System
NRC – National Response Center
NRCS – National Resources Conservation Service
POTW – Publicly Owned Treatment Works
SPCC – Spill Prevention Control and Countermeasure
SWPPP – Stormwater Pollution Prevention Plan
TMDL – Total Maximum Daily Load
USGS – United States Geological Survey
WQS – Water Quality Standard

